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DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 570 and 579

RIN: 1235-AA06

Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations – Civil Money Penalties

AGENCY: Wage and Hour Division, Labor.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of Labor (Department or DOL) is withdrawing its proposed rule published on September 2, 2011, 76 FR 54836, which provided the public with notice of and the opportunity to submit written comments on its proposal to amend its child labor regulations which protect children from employment in particularly hazardous occupations.

DATES: The proposed rule published on September 2, 2011 (76 FR 54836) is withdrawn as of [INSERT DATE OF PUBLICATION IN FR].

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director, Division of Regulations, Legislation and Interpretation, Wage and Hour Division, U.S. Department

of Labor, Room S-3502, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693-0406 (this is not a toll free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693-0023. TTY/TDD callers may dial toll-free (877) 889-5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

A. Rulemaking Background

On September 2, 2011, WHD published a Notice of Proposed Rulemaking (NPRM), 76 FR 54836, that proposed amendments to child labor regulations issued pursuant to the child labor provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. 203(l), 212, 213, primarily to address the employment of children under 16 years of age in particularly hazardous agricultural occupations. The FLSA's child labor provisions do not apply to the employment of children working in agricultural industries once they reach the age of 16. The proposed amendments would have, among other things, amended existing hazardous occupation orders related to the agricultural employment of children under the age of 16 to address specific recommendations made by the National Institute for Occupational Safety and Health; created new agricultural hazardous occupation orders; and revised the agricultural student learner exemptions that permit the employment of 14- and 15-year-olds to perform certain hazardous agricultural work that they would otherwise be prohibited from performing because they are under the age of 16.

The FLSA exempts from the agricultural hazardous occupation orders and minimum age requirements children who are employed by their parent or person standing in the place of their parent on a farm owned or operated by the parent or such person. See 29 U.S.C. 213(c)(1)(A), (c)(2). As a result of this statutory parental exemption, the agricultural hazardous occupation orders apply only to children who are hired farm workers employed on farms not owned or operated by their parent or person standing in the place of their parent. The rule as proposed would have amended the Department's regulations to include the Wage Hour Division's interpretations of the statutory parental exemption as it applies to the agricultural employment of children under the age of 16.

The Department received over 10,000 written comments on the proposed rule and held a public hearing on the rule on October 14, 2011, in Tampa, Florida. To ensure that all who wished to comment on the rule had the opportunity to do so the Department extended the initial 60-day comment period for an additional 30 days, through December 1, 2011. As a result of the comments it received, on February 1, 2012, the Department announced that it would re-propose the parts of the child labor NPRM related to its interpretation of the agricultural parental exemption. On April 26, 2012, the Department announced its intent to withdraw the entire rulemaking, including the proposed regulations related to the parental exemption.

B. Reason for the Decision to Withdraw the Proposed Rule

1. The Secretary's Discretion to Establish Hazardous Occupations Orders.

To protect the safety, health and welfare of children, the FLSA, 29 U.S.C. 213(c)(2), gives the Secretary discretion to "find and declare[]" certain occupations to be "particularly hazardous," for children under the age of 16. The FLSA's child labor provisions do not apply to children employed in agriculture who are 16 years of age and older. The Secretary has the same discretion to establish hazardous occupation orders in nonagricultural employment, but those orders apply to children who are 17 years of age and younger. 29 U.S.C. 203(l). The Secretary has used this discretionary authority to establish 17 hazardous occupation orders applicable to nonagricultural employment, and 11 hazardous orders applicable to agricultural employment. See 29 CFR 570.51-.68 & 570.71.

2. Use of a Non-Regulatory Approach.

The Department received over 10,000 comments on the proposed rule. Many of the comments were from parents who own or operate farms who believed that the Department's proposal would limit their ability to employ their own children on their farm and to provide their children with hands-on experiences in agricultural occupations. Further, many of the commenters maintained that the Department's proposed amendments interpreting the statutory parental exemption failed to recognize that many farms are no longer wholly owned by a parent or parents of the children employed on the farm and the proposed rule should allow for corporate and other types of ownership of farms by multiple members of an employed child's family. Other commenters, including 153 Members of the House of Representatives, 42 United States Senators, and a number

of agricultural education instructors, emphasized the importance of preparing the next generation of farmers and ranchers. These individuals also stated that the Department's proposal to increase the rigor of the current student learner exemptions that allow 14- and 15-year-olds to be employed in certain occupations that the Secretary has declared are particularly hazardous for children under the age of 16, would unduly limit the work young children could be employed to perform on a farm and thereby limit their opportunity to learn about farming through hands-on experience and discourage them from entering the field of farming. The Department also received comments from members of Congress and the public that supported the Department's proposed amendment, citing to data demonstrating that the hazards on farms are significant.

On April 26, 2012, the Department issued a statement announcing that it would withdraw the proposed child labor rule. Acknowledging the thousands of comments the Department received that expressed concerns about the effect the commenters stated the rule would have on small family-owned farms and farming traditions, the Department stated that "[t]he Obama administration is firmly committed to promoting family farmers and respecting the rural way of life, especially the role that parents and other family members play in passing those traditions down through the generations." The Department stated that its decision to withdraw, rather than re-propose or finalize the rule, was based on its "deep[] commit[ment] to listening and responding to what Americans across the country have to say about proposed rules and regulations." The Department explained that rather than re-proposing the regulation, it intended to work to promote safer and healthier working practices and conditions for children employed as farm workers by collaborating with farming organizations such as the American Farm

Bureau and Future Farmers of America to develop educational programs that address hazardous agricultural work practices and conditions.

C. Conclusion

In summary, the FLSA grants the Secretary of Labor exclusive authority to determine that a proposed rule should be withdrawn provided she publishes reasons for her decision not to promulgate the rule. This Notice explains the Secretary's reasons for pursuing a non-regulatory approach to addressing the safety and health of children employed in agriculture rather than amending the existing child labor rules. The FLSA affords the Secretary broad authority to set and order her rulemaking priorities. The Secretary properly exercised her discretion by determining not to proceed with the child labor rulemaking, particularly in light of the many comments informing the Secretary about the effect of the rule.

For the reasons stated herein, the proposed rule is withdrawn.

Nancy J. Leppink

Deputy Administrator, Wage and Hour Division

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